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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Petitioners, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent,	A096423 (Alameda County Super. Ct. No. 840184-7)
JONATHAN RUI, Real Party in Interest.	

I. INTRODUCTION

Plaintiff Jonathan Rui (Rui) alleges that the Regents of the University of California (the Regents) and several individuals affiliated with the Regents (jointly, petitioners) discriminated against him and intentionally caused him emotional distress by denying him admission to Boalt Hall School of Law (Boalt). The trial court sustained demurrers to some of Rui's claims but overruled petitioners' demurrer to Rui's cause of action alleging intentional infliction of emotional distress. Petitioners seek a writ of mandate directing the trial court to sustain their demurrer to plaintiff's emotional distress claim.

We hold that Rui's complaint does not state a cause of action for intentional infliction of emotional distress as a matter of law. We therefore grant the petition for writ of mandate.

II. FACTS AND PROCEDURAL BACKGROUND

On April 12, 2001, Rui filed a complaint for damages and injunctive relief against the Regents, Boalt's current and former Deans, John Dwyer and Herma Hill Kay, its Associate Dean, Jan Vetter, its Director of Admissions, Edward Tom, and several doe defendants. Rui alleged the following facts: Rui applied to Boalt in January 2000 and received written notification that his admission was denied on April 1, 2000. In July 2000, Rui requested that defendants reconsider his application because he was under the impression that defendants had failed to consider the impact of his disability (obsessive compulsive disorder) when calculating his eligibility for admission. On July 28, 2000, Rui received a letter from defendants informing him that his request for reconsideration was denied. According to Rui, defendants have an "unwritten quota/policy regarding the limitation of the quantities of persons who are identified as applicants with Asian ancestry." Rui would have been admitted to Boalt "but for his Asian ancestry."

Rui attempted to allege causes of action for (1) discrimination in violation of article 1, section 31, of the state Constitution; (2) discrimination in violation of article 1, section 7, of the state Constitution; (3) discrimination in violation of Government Code section 11135; (4) intentional infliction of emotional distress; and (5) injunctive relief.

The individual defendants demurred to Rui's first cause of action for discrimination. All of the defendants demurred to Rui's second and third causes of action for discrimination, his fourth cause of action for intentional infliction of emotional distress and his fifth cause of action for injunctive relief.

On August 29, 2001, a hearing on the demurrers was held before the Honorable Demetrios P. Agretelis. Thereafter, the trial court sustained without leave to amend (1) the individual defendants' demurrer to the first cause of action, (2) the demurrer to the second cause of action as to the individual defendants only, (3) all of the defendants' demurrer to the third cause of action, and (4) all of the defendants' demurrer to the fifth

cause of action. However, the trial court overruled the demurrer to the fourth cause of action for intentional infliction of emotional distress.

Therefore, according to the trial court, Rui successfully alleged two causes of action against the Regents for discrimination and one cause of action against both the Regents and the individual defendants for intentional infliction of emotional distress.

On October 11, 2001, petitioners sought relief in this court to compel the trial court to sustain their demurrer to the emotional distress cause of action. We issued an order to show cause why the peremptory writ should not issue and calendared the matter for argument.

III. DISCUSSION

A. *Propriety of Writ*

Rui contends that writ review of the trial court's order is not permissible in this case because petitioners have failed to demonstrate why they cannot wait until judgment is entered to appeal the trial court's demurrer ruling. We disagree.

"Appellate courts are reluctant to intervene by extraordinary pretrial writ in matters of pleading." (*County of Los Angeles v. Superior Court* (1998) 68 Cal.App.4th 1166, 1170.) "'In most . . . cases, as is true of most other interim orders, the parties must be relegated to a review of the order on appeal from the final judgment.'" (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 851.) However, writ review of a ruling on the pleadings is appropriate if the issue presented involves an important matter of public interest. (*Id.* at p. 851; *Fogarty v. Superior Court* (1981) 117 Cal.App.3d 316, 320.)

The present case involves a matter of important public interest. The trial court's ruling could affect university administrators across the country who must routinely make admission decisions. The court's ruling exposes university administrators to personal liability (including punitive damages) whenever they reject an application for admission.

Furthermore, courts have found that an appeal is not an adequate remedy when a trial court has breached its obligation to terminate a clearly spurious cause of action. (*California Physicians' Service v. Superior Court* (1992) 9 Cal.App.4th 1321, 1323.) "'Where there is no direct appeal from a court's adverse ruling, and the aggrieved party

would be compelled to go through a trial and appeal from a final judgment, the unreasonableness of the delay and expense is apparent. As in prohibition, the remedy by appeal is usually deemed inadequate in these situations, and mandamus is allowed.'" (*Fogarty v. Superior Court, supra*, 117 Cal.App.3d at p. 320.)

In this case, Rui's emotional distress claim is the only cause of action against the individual defendants that survived the demurer proceedings. Petitioners contend that claim is clearly spurious. If they are correct, an appeal is not an adequate remedy because it would force the individual defendants to participate in this litigation and to expend considerable time and expense defending a spurious claim.

B. *The Demurrer Ruling*

By overruling petitioners' demurrer to the fourth cause of action, the trial court found that Rui had alleged facts to satisfy all of the elements of the tort of intentional infliction of emotional distress, which are: "'"'(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. . . .'"'" (*Potter v. Firestone Tire & Rubber Co*. (1993) 6 Cal.4th 965, 1001 (*Potter*).)

Petitioners argue that Rui did not and cannot allege facts to satisfy the first element of this tort. In his complaint, Rui alleged that "[t]he rejection of plaintiff's admission application to Boalt Hall School of Law and defendants refusal to reconsider plaintiff's admission application, due to a discriminatory scheme and design in violation of the Constitution of California, constitute extreme and outrageous conduct by the defendants." Petitioners contend this alleged conduct is not extreme and outrageous as a matter of law.

"'"Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community."'" (*Potter, supra,* 6 Cal.4th at p. 1001.) "'Generally, conduct will be found to be actionable where the recitation of the facts to an average member of the community would arouse his resentment against the actor, and

lead him to exclaim, "Outrageous!" [Citations.]'" (*Helgeson v. American International Group, Inc.* (S.D.Cal. 1999) 44 F.Supp.2d 1091, 1095; *KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.) "[L]iability '"does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," but only to conduct so extreme and outrageous "as to go beyond all possible bonds of decency . . . ."' [Citation.]" (*Ankeny v. Lockheed Missiles & Space Co*. (1979) 88 Cal.App.3d 531, 537.)

In this case, the only conduct Rui has alleged is that petitioners denied his application for admission to Boalt. Such conduct cannot reasonably be said to cause feelings of outrage. Indeed, this challenged conduct is a common action that a university administrator is required to perform.

Petitioners persuasively analogize the conduct alleged in this case to a routine personnel decision made by an employer. In the employment context, such routine decisions as hiring and firing do not constitute extreme and outrageous conduct as a matter of law. (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55 (*Janken)*; see also *King v. AC&R Advertising* (9th Cir. 1995) 65 F.3d 764; *Schneider v. TRW, Inc.* (9th Cir. 1991) 938 F.2d 986, 992 ; *Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883-884; *Ankeny v. Lockheed Missiles & Space Co*., *supra*, 88 Cal.App.3d at pp. 536-537.)

In *Janken*, employees of a large aircraft company sued their supervisors for age discrimination and for intentional infliction of emotional distress. Plaintiffs alleged these supervisors made personnel management decisions pursuant to the company's policy of discriminating against employees over the age of 40 by terminating them or forcing them to resign without good cause. The *Janken* court affirmed trial court rulings sustaining demurrers to both causes of action. With respect to the emotional distress claim, the *Janken* court found that plaintiffs failed to plead facts to satisfy the outrageous conduct requirement. The court reasoned: "Managing personnel is not outrageous conduct beyond the bounds of human decency, but rather conduct essential to the welfare and prosperity of society. A simple pleading of personnel management activity is insufficient to support a claim of intentional infliction of emotional distress, even if improper

motivation is alleged. If personnel management decisions are improperly motivated, the remedy is a suit against the employer for discrimination." (*Janken, supra*, 46 Cal.App.4th at p. 64.)

We agree with petitioners that "the act of denying admission to an applicant is the functional equivalent of 'commonly necessary personnel management actions such as hiring and firing' found by the *Janken* court not to be outrageous as a matter of law." (Quoting *Janken, supra*, 46 Cal.App.4th at p. 80.) Furthermore, *Janken* illustrates a more fundamental rule: The conduct itself, not the alleged motive for that conduct, must be outrageous in order to satisfy the first element of the emotional distress tort. (*Jankin, supra*, 46 Cal.App.4th at p. 80; *Helgeson v. American International Group, Inc.*, *supra*, 44 F.Supp.2d at p. 1095 [even if employer's actions were improperly motivated, every-day management decisions fell "far short of the necessary standard of outrageous conduct beyond all bounds of decency"].)

In this case, the trial court failed to appreciate this important distinction between conduct and motive. It reasoned that discriminating against Asian students by excluding them from Boalt constitutes extreme and outrageous conduct. But the allegations of a discriminatory motive, *though supportive of a cause of action for discrimination*, do not satisfy the extreme and outrageous conduct element. The only *conduct* that Rui alleged in his complaint was that petitioners denied his applications. This routine administrative action does not constitute outrageous conduct as a matter of law.

Rui attempts to distinguish petitioners' authority as "employment law cases" involving statutory employment-related statutes. He argues that "[j]ust as defendants cannot apply law interpreting the Revenue Code or the Welfare and Institutions Code or the Business and Professions Code to this case, defendants may also not apply law interpreting the FEHA to this case." We are not persuaded. *Janken* and the other cases cited above are relevant to the extent they involve claims for intentional infliction of emotional distress. That they may also involve statutory employment law claims does not change that fact.

Persisting with his argument, Rui maintains that "mere management decisions" can constitute extreme and outrageous conduct in *common law* employment cases. The authorities Rui cites do not support this contention. (*Huber v. Standard Ins. Co*. (9th Cir. 1988) 841 F.2d 980 (*Huber*); *Rulon-Miller v. International Business Machines Corp.*(1984) 162 Cal.App.3d 241, 255 (*Rulon-Miller*).)[1] In *Huber*, the court found that the humiliating and degrading manner in which the plaintiff was terminated and the defendant employer's abuse of its position of power to damage the plaintiff by impeding him from finding new employment could constitute extreme and outrageous conduct. (*Huber, supra*, 841 F.2d at p. 987.) In *Rulon-Miller,* the defendant employer's outrageous conduct was a "combination of statements and conduct [that] would under any reasoned view tend to humiliate and degrade" the plaintiff. (*Rulon-Miller, supra,* 162 Cal.App.3d at p. 255.)

Thus, in both *Huber* and *Rulon-Miller*, the allegedly outrageous conduct was not a mere management decision, but rather the actions taken to effectuate that management decision. (*Cf. Trerice v. Blue Cross of California, supra*, 209 Cal.App.3d at pp. 884-885 [distinguishing an employer's routine termination decision from the outrageous conduct and statements in *Rulon-Miller* that were designed to personally humiliate the plaintiff].) Here, by contrast, Rui does not allege any facts which suggest that the decision to reject his application was implemented or communicated to him in an outrageous manner. Indeed, Rui does not dispute petitioners' representation to this court that the decision to deny Rui's application for admission was communicated via standard form letters.

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[1] *Huber* and *Rulon-Miller* were disapproved on other grounds in *Foley v. Interactive Data Corp*. (1988) 47 Cal.3d 654. Rui also cites *Wallis v. Superior Court* (1984) 160 Cal.App.3d 1109 (*Wallis*) which was also disapproved on another ground by the *Foley* court. Additionally, *Wallis* did not involve a routine management decision by an employer. (*Wallis, supra,* 160 Cal.App.3d 1109.) It was a breach of contract case in which the plaintiff's former employer allegedly lied to the plaintiff and abused its position of financial control over the plaintiff. (*Id*. at p. 1120.) No comparable conduct is alleged in this case.

The petitioners' alleged undisclosed motive for denying Rui's application does not alter the basic nature of the conduct alleged. Rui, like the trial court, ignores this crucial distinction between motive and conduct. In *Cochran v. Cochran* (1998) 65 Cal.App.4th 488 (*Cochran*), which is not an employment case, the court advised that, "[i]n evaluating whether the defendant's conduct was outrageous, it is 'not . . . enough that the defendant has acted with an intent which is tortuous or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" (*Id.* at p. 496, quoting Rest.2d Torts, § 46, com. d, p. 73.) *Cochran* reinforces our conclusion that the petitioners' alleged motive for denying Rui's application, no matter how improper, does not satisfy the extreme and outrageous conduct requirement. The trial court's contrary conclusion was legally erroneous.

In summary, we hold that the decision to reject an application to a law school or a university does not itself constitute extreme and outrageous conduct regardless of the decision makers' alleged motive. To allege a cause of action for intentional infliction of emotional distress based on such a rejection, the plaintiff must, as a threshold requirement, allege facts to show that the rejection decision was communicated to the applicant in an extreme and outrageous manner. Since no such facts were alleged in this case, petitioners' demurrer to the fourth cause of action should have been sustained.

IV. DISPOSITION

Let a peremptory writ of mandate issue directing the superior court to vacate its order overruling petitioners' demurrer to the fourth cause of action and to enter a new order sustaining the demurrer to said cause of action without leave to amend. Costs are awarded to petitioners.

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Haerle, J.

We concur:

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Kline, P.J.

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Ruvolo, J.